MISC. CRIMINAL APPLICATION NO.1786 OF 1995.

Date of decision: 16.4.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. P.M. Vyas, advocate appointed, for petitioner.
Mr. K.P. Raval, A.P.P.. for respondent No.1-State.
Ms. Megha Jani, advocate for respondent Nos.2 to 8.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Coram: R. R. Jain, J.

April 16, 1996.
Oral judgment:

Aggrieved by concurrent findings of the courts below accepting 'B' Summary report filed by Investigating Officer, in respect of a private complaint filed by present petitioner for offences under Sections 452, 453, 447, 380 and 114 of IPC, the petitioner has preferred this application under Section 482 of the Criminal Procedure Code ("the Code" for short) invoking inherent powers.

Briefly stated the facts giving rise to the present case are as under:
As alleged, the petitioner was tenant of Room No.2, House

No.419, Balmukund's Chali, Isanpur, owned by respondents No.2 and 3. As alleged, she was paying Rs.300 per month as rent and was running beauty parlour tuition classes. However, right since inception of tenancy she was harassed even for trifle causes and constantly was under threats of mental cruelty and physical assault. As alleged, respondent No.1, in collusion with respondent No.8, an advocate, forcibly dispossessed her, removed articles and locked the premises and thus committed alleged wrong and thereby she sustained loss to the extent of Rs.35,000/to Rs.40,000/- Under these circumstances, the petitioner filed complaint before learned Metropolitan Magistrate, Court No.19, Ahmedabad, on 20.4.1993. While taking cognizance of the matter, the learned Metropolitan Magistrate directed the concerned Police Inspector to make inquiry under section 156 (3) of the Code. On completion of inquiry, as the investigating officer did not find any substance, filed B summary report and requested for termination of proceedings. A show cause notice was issued to the petitioner, who appeared in person and filed written objections. However, on merits, the Metropolitan Magistrate was pleased to accept B summary report vide order dated 26.8.1994. Aggrieved by the order, the petitioner preferred Criminal Revision Application No.299 of 1994 in the City Civil & Sessions Court, Ahmedabad. The learned Additional City Sessions Judge, vide order dated 31.3.1995 confirmed the view taken by the Metropolitan Magistrate and dismissed the Revision Application. Aggrieved by the order, the petitioner has come before this Court under Section 482 of the Code for quashing finding given by both the courts below. From the record it transpires that initially the petitioner appeared party in person. However, during the course of hearing, Mr. P.M. Vyas, Advocate, has been appointed by court to represent the petitioner.

Learned A.P.P. Mr. Raval has raised preliminary objections about maintainability of application on two grounds:

1. Maintainability under Section 482 of the Code.
2. Maintainability against respondents No.3 to 7 as were not parties before the trial court.

It cannot be gainsaid that the proceedings initiated before the appellate court are always in continuation of the trial court proceedings and, therefore, it has to be between same parties unless subsequent developments warrant addition of new parties and deletion of old. On bare look at the trial court proceedings i.e., inquiry Nol.52/93, it would be clear that respondents No.2 and 8

were made as parties and cognizance was taken against them only. Respondent Nos.3 to 7 in any way do not figure in the proceedings of the trial court. Yet while filing Criminal Revision Application before the City Sessions Court, other respondents over and above respondents No. 2 and 8 were joined. The newly added respondents are:

1. Respondent No.3-Mangaji Thakor
2. Respondent No.4-Kashiben Melabhai Thakor
3. Respondent No.5-Melabhai Somabhai Thakor
4. Respondent No.6-Mother of Meenaben (Meenaben na mummy).
5. Respondent No.7-Father of Meenaben (Meenaben na Pappa).

As names of other respondent are impleaded, even without any subsequent development before the City Sessions Court, have also been impleaded in this petition. But as a cardinal rule when other respondents were not party before the trial court and no cognizance is taken against them, are not necessary parties for just decision of this matter hence the petition at the outset would not be maintainable against respondents No.3 to 7, more particularly when names of respondents No.6 and 7 are not at all described. In the petition, the respondent No. 6 has been described as mother of Meenaben (Meenaben na Mummy) and the respondent No.7 as father of Meenaben (Meenaben na Pappa). This is quite vague description and not possible under law. Therefore, in my view, the petition qua respondents No.3 to 7 is not maintainable.

The order passed by the trial court accepting B summary report of the investigating officer was challenged in the court of City Sessions at Ahmedabad by way of Criminal Revision Application No.299 of 1994. Since under law second revision is not maintainable the revisional jurisdiction of this court cannot be invoked, yet invoking inherent jurisdiction of this court under Section 482 of the Code the impugned order is challenged.

The Supreme Court in the case of Deepti v. Akhil Rai, 1995 SCC (Cri) 1020, has held that in case where second revision application is not maintainable, inherent powers cannot be utilised for exercising powers expressly barred by Code. By way of this application, the petitioner wants to challenge legality of concurrent finding of both the courts below. Section 399 (3) of Criminal Procedure Code expressly prohibits any further revision application making order passed by Sessions Court as final. Thus, a thing which cannot be done directly cannot be permitted to be done indirectly. Thus the correctness, legality and propriety of such order cannot be examined in any

way. If revisional jurisdiction cannot be exercised the same cannot be examined by invoking inherent jurisdiction. Consequently, in my view, the application itself would not be maintainable.

Apart from this fact, the order of lower appellate court is quite proper and legal. Mr. Vyas has not been able to assail in any way. If the investigation does not reveal commission of any offence it cannot be compelled to file charge-sheet. In my view, the trial court has rightly accepted police report and granted B summary. On perusal of record, it clearly transpires that the police filed B summary report as did not find any substance in the complaint, saying that no case is made out even recording statements of more than 20 to 25 witnesses. Not only that the witnesses do not corroborate the case of the petitioner but the documentary evidence collected during investigation also destroys the case of the petitioner. The petitioner does admit two receipts duly signed by her and passed in favour of respondent No.1 stating that on her own volition she vacated and removed household articles and handed over the premises in question. With this concrete evidence I do not find any illegality in the order warranting any interference by this court nor suffers from any error of law apparent on the face of record and hence finding no merits, the petition, is rejected. Rule discharged. Interim relief stands vacated.